

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
	)	CASE NO. 2:93-cr-00310-01-ID
v.	)	(WO)
	)	
ROSA MAE SMILEY WILLIAMS,	)	
	)	
Defendant.	)	

**ORDER**

This cause is now before the court on the defendant's Notice of Appeal (Doc. #1647) filed on May 28, 2010 and defendant's Motion for Leave to Proceed In Forma Pauperis (Doc. #1648) also filed on May 28, 2010.

Title 28 U.S.C.A. § 1915(a)(3) provides that "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." In making a determination as to good faith, a court must use an objective standard, such as whether the appeal is "frivolous," *Coppedge v. United States*, 369 U.S. 438, 445 (1962), or "has no substantive merit." *United States v. Bottoson*, 644 F.2d 1174, 1176 (5th Cir. Unit B May 15, 1981) (per curiam), *cert. denied*, 454 U.S. 903, 102 S. Ct. 411 (1981)<sup>1</sup>; *see also Rudolph v. Allen*, 666 F.2d 519, 520 (11th Cir. 1982 (per curiam), *cert. denied*, 457 U.S. 1122, 102 S. Ct. 2938 (1982); *Morris v. Ross*, 663 F.2d 1032 (11th Cir. 1981), *cert. denied*, 456 U.S. 1010 (1982).

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<sup>1</sup> See *Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981) (*en banc*) (adopting as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981).

An appeal is frivolous if the factual allegations are clearly baseless or the legal theories are indisputably meritless. *See Carroll v. Gross*, 984 F.2d 392, 393 (11th Cir. 1993).

Applying this standard, the court finds that the defendant's appeal is without a legal or factual basis and, accordingly, is frivolous and not taken in good faith. *See, e.g., Rudolph v. Allan, supra; Brown v. Pena*, 441 F. Supp. 1382 (S.D. Fla. 1977), *aff'd without opinion*, 589 F.2d 1113 (5th Cir. 1979). As set forth in the Order Regarding Motion for Sentence Reduction (Doc. #1645) filed on May 17, 2010, the defendant is ineligible for a reduction in sentence under 18 U.S.C. § 3582(c)(2). The defendant provides no basis for the factual allegations in either the Motion or the Affidavit for Leave to Proceed in Forma Pauperis and she asserts no meritorious legal theories.

Accordingly, it is CONSIDERED and ORDERED as follows:

(1) that the defendant's Motion for Leave to Proceed In Forma Pauperis (Doc. #1648) be and the same is hereby DENIED.

(2) that the defendant's appeal in this cause be and the same is hereby certified, pursuant to 28 U.S.C.A. § 1915(a), as not taken in good faith.

DONE this the 23rd day of June, 2010.

/s/ Ira DeMent  
SENIOR UNITED STATES DISTRICT JUDGE